ATTORNEY FOR APPELLANT:

ALISON T. FRAZIER
Alcorn Goering & Sage, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

BARBARA A. NARDI
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

KAREN MAPLES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A01-0610-CR-468
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable G. Michael Witte, Judge
Cause No. 15D01-0509-FD-325

June 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Karen Maples appeals her two convictions for class D felony neglect of a dependent. We affirm.

Issues

We restate Maples's issues as follows:

I. Whether sufficient evidence supports her convictions;

II. Whether the jury rendered fatally inconsistent verdicts in finding her guilty of neglecting two of her four children and not guilty of neglecting the other two children; and

III. Whether her convictions violate Indiana double jeopardy principles.

Facts and Procedural History[1]

The relevant facts most favorable to the jury's verdict indicate that Maples lived in her Lawrenceburg home with her four children: seven-year-old L.S., six-year-old I.L., four-year-old S.D., and two-year-old A.D. At 11:17 p.m. on September 9, 2005, L.S. called 911 and told the operator that she and I.L. had awakened to find Maples and her male companion gone. I.L. told the operator that A.D. was sleeping upstairs and that S.D. was sleeping in the living room. The operator dispatched Officer Jason Jacob, who arrived at Maples's residence at 11:20 p.m. Two other officers arrived to assist Officer Jacob. They found no adult in the home. S.D. awoke after the officers arrived. A.D. remained asleep in her crib.

[1] We note that Maples's counsel included Maples's pre-sentence report in the appellant's appendix. Indiana Administrative Rule 9(G)(1) states that the information therein "is excluded from public access and is confidential." Indiana Trial Rule 5(G)(1) requires that such documents be separately identified and "tendered on light green paper or have a light green coversheet attached to the document, marked 'Not for Public Access' or 'Confidential.'"

At approximately 12:00 a.m., Maples's parents arrived at the home. Maples and her companion arrived five minutes later. Officer Jacob asked Maples where she had been. Maples replied that she had gone to meet someone at a motel between Aurora and Dillsboro. Maples told Officer Jacob that she believed that L.S. was old enough to watch her siblings and that the children "would be alright if she ran up there real quick." Tr. at 82.

The State charged Maples with four counts of class D felony neglect of a dependent, one for each child. On May 8, 2006, a jury found Maples guilty of neglecting S.D. and A.D. and not guilty of neglecting L.S. and I.L. Maples now appeals her convictions.

Discussion and Decision

I. Sufficiency of the Evidence

The neglect of a dependent statute under which Maples was charged and convicted provides in pertinent part,

> (a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:
> (1) places the dependent in a situation that endangers the dependent's life or health;[2]
> (2) abandons or cruelly confines the dependent;
> (3) deprives the dependent of necessary support; or
> (4) deprives the dependent of education as required by law; commits neglect of a dependent, a Class D felony.

Ind. Code § 35-46-1-4. The State alleged that Maples knowingly or intentionally placed her dependent children in a situation that endangered their lives or health by leaving them "with

[2] For purposes of the neglect statute, the word "health" is "not limited to one's physical state, but includes an individual's psychological, mental and emotional status." *Harrison v. State*, 644 N.E.2d 888, 890 (Ind. Ct. App. 1994), *trans. denied* (1996).

no adult present in [the] home for approximately forty-five (45) minutes." Appellant's App. at 77-80 (amended charging informations).

Maples challenges the sufficiency of the evidence supporting her convictions. In reviewing such challenges, we neither judge the credibility of witnesses nor weigh the evidence, but rather look "only to that evidence most favorable to the State and all reasonable inferences to be drawn therefrom." *May v. State*, 543 N.E.2d 1122, 1123 (Ind. 1989).

> If there is substantial evidence of probative value to support the conclusion of the trier of fact, the verdict will not be overturned. Elements of the crime may be established by circumstantial evidence and logical inferences to be drawn therefrom. It is for the jury to determine which witnesses they believe and which they disbelieve.

Id. (citation omitted).

In addressing a challenge to the constitutionality of the neglect statute, our supreme court stated that it "is to be regarded as applying to situations that endanger the life or health of a dependent. The placement must itself expose the dependent to a danger which is actual and appreciable." *State v. Downey*, 476 N.E.2d 121, 123 (Ind. 1985).[3] With respect to mens rea, the court has held that to convict a person of knowingly neglecting a dependent, the State must show that "the accused must have been subjectively aware of a high probability that he

[3] In addressing a more recent challenge to the neglect statute, this writer held that Indiana Code Section 35-46-1-4 violates the Proportionality Clause of the Indiana Constitution, in that with respect to abandonment or cruel confinement, "the crimes of neglect of a dependent as a class C felony and neglect of a dependent as a class D felony, each carrying a different sentencing range, can be proven with identical elements." *Poling v. State*, 853 N.E.2d 1270, 1277 (Ind. Ct. App. 2006). *See* Ind. Code 35-46-1-4(b)(4) (stating that neglect is a class C felony "if it is committed under subsection (a)(2) and consists of cruel or unusual confinement or abandonment."). Maples asserts that "the entire neglect statute is unconstitutional pursuant to *Poling* and that for this reason alone, her convictions cannot stand." Appellant's Br. at 5-6. We note that Maples was charged and convicted pursuant to another paragraph of the statute and that Maples's unsupported assertion is insufficient to establish that the entire statute is unconstitutional.

placed the dependent in a dangerous situation." *Armour v. State*, 479 N.E.2d 1294, 1297 (Ind. 1985).

Maples argues that the State failed to prove that she must have been subjectively aware of a high probability that she exposed S.D. and A.D. to an actual and appreciable danger by leaving them without adult supervision for at least forty-five minutes on the night in question. Maples points to *Gross v. State*, in which we said,

> It seems clear that to be an "actual and appreciable" danger for purposes of the neglect statute when children are concerned, the child must be exposed to some risk of physical or mental harm that goes substantially beyond the normal risk of bumps, bruises, or even worse that accompany the activities of the average child. This is consistent with a "knowing" mens rea, which requires subjective awareness of a "high probability" that a dependent has been placed in a dangerous situation, not just any probability.

817 N.E.2d 306, 309 (Ind. Ct. App. 2004).

Maples notes that S.D. and A.D. were still asleep when the police arrived and contends that "[t]he harm that could have come to the children, had they been awake, were the ordinary dangers confronting children on an everyday basis." Appellant's Br. at 8. She further states that she

> believed, perhaps ill[-]advisedly, that L.S. was capable of watching the children and that they would be alright for a short period of time. This was in fact what happened. L.S. knew to call 911 when she got scared, no one was injured, and no one left the home during the 45-minute period that Ms. Maples was gone.

Id. at 9. Maples acknowledges that she "made a mistake when she left her children alone for forty-five minutes" but claims that "[t]his mistake in parenting, however, should not be subjected to prosecutorial scrutiny." *Id*.

We disagree. The jury was free to disbelieve Maples's self-serving statements to Officer Jacob and reasonably could have concluded that she must have been subjectively aware of a high probability that she placed her two-year-old and four-year-old children in a situation that endangered their lives or health by leaving them at home alone with their six- and seven-year-old siblings for at least forty-five minutes on the night in question. The actual and appreciable dangers of doing so are too numerous to mention, and the fact that S.D. and A.D. remained asleep and unharmed is inconsequential. To accept Maples's argument would "require us to conclude that the legislature intended to engage in a roulette game whereby conduct or inaction with respect to the care of a child, albeit heedless or neglectful, could continue unchecked so long as it did not happen to harm the child. This we will not do." *Johnson v. State*, 555 N.E.2d 1362, 1366 (Ind. Ct. App. 1990). We conclude that the evidence is sufficient to support Maples's convictions.

II. Inconsistent Verdicts

"Verdicts may be so extremely contradictory and irreconcilable as to require corrective action." *Cleasant v. State*, 779 N.E.2d 1260, 1263 (Ind. Ct. App. 2002). Maples contends that the jury rendered fatally inconsistent verdicts in finding her guilty of neglecting S.D. and A.D. and not guilty of neglecting L.S. and I.L. and urges us to take corrective action. As we explained in *Robinson v. State*,

> Our supreme court does not demand perfect logical consistency in verdicts. Only extremely contradictory and irreconcilable verdicts warrant corrective action. Moreover, jury verdicts do not have to be consistent in cases where one criminal transaction gives rise to criminal liability for separate and distinct offenses. A verdict may be inconsistent or even illogical, but nevertheless be permissible if it is supported by sufficient evidence. Generally, where the trial of a defendant results in acquittal upon some charges

> and convictions upon others, the results will survive a claim of inconsistency where the evidence is sufficient to support the convictions.

814 N.E.2d 704, 709 (Ind. Ct. App. 2004) (citations omitted).

We have determined that the evidence is sufficient to support Maples's convictions for neglecting S.D. and A.D. Consequently, we need not take corrective action in this case.

III. Double Jeopardy

Finally, Maples claims that her convictions violate Indiana double jeopardy principles. "Two offenses are the 'same offense' in violation of Article 1, Section 14 of the Indiana Constitution if, 'with respect to either the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense.'" *Poling v. State*, 853 N.E.2d 1270, 1277 (Ind. Ct. App. 2006) (quoting *Richardson v. State*, 717 N.E.2d 32, 49 (Ind.1999)). Maples contends that her two neglect convictions are the same offense under both the "statutory elements" test and the "actual evidence" test.

We disagree. Maples was charged with one count of neglect for each of her four children; thus, the essential elements of the crimes and the actual evidence used to convict for each crime were different as to each child, even though they relate to a single act of leaving them unattended. Maples's acquittal on the counts regarding her two older children amply illustrates this point. We therefore affirm her convictions.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.